

A clean copy of amended claim 9 appears in the Appendix hereto.

Claims 9 through 11 (presumably intending claims 9, 11 and 12) were rejected under 35 U.S.C. §103 for obviousness predicated upon Yano in view of Gwon and Tottori.

In the statement of the rejection, the Examiner referred to Figs. 1(a)-2 of Yano et al., and to related portions of the text, asserting the disclosure of a method corresponding to that claimed except for the use of CMP and for the use of polycrystalline silicon for contacts. The Examiner then asserted that the secondary references disclose such features and concluded the claimed invention would have been obvious. This rejection is traversed.

There are fundamental differences between the claimed invention and the methodology of Yano et al., beyond those noted by the Examiner, that undermine the obviousness conclusion under 35 U.S.C. §103. Specifically, in accordance with the present invention the conductor plugs filling the openings in the first interlayer insulating film are formed **before** forming the second interlayer insulating film thereon and **before** forming the wiring pattern on the second interlayer insulating film. This sequence of manipulative steps is neither disclosed nor suggested by Yano et al. Indeed, Yano et al. **teach away** from the claimed invention by forming the patterned first metal layer 41B and patterned second method layer 42B **before** forming plugs 51. This is the complete **reverse** of the present invention.

Further, adverting to page 3 of the October 16, 2002 Office Action, lines 2 through 4, the wiring pattern 41B noted by the Examiner is not formed on the second

ipsulating film 22 as asserted, but on the layer 21 identified by the Examiner as the first insulating layer.

The above argued fundamental differences between the claim method and the methodology of Yano et al. are not cured by the secondary references to Gwon et al. and Tottori. Ergo, even **if** the applied references are combined, the claimed invention would **not** result. *Uniroyal, Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 5 USPQ2d 1434 (Fed. Cir. 1988). Further, there is **no** apparent **factual** basis upon which to predicate the conclusion that one having ordinary skill in the art would have been realistically motivated to modify whatever method can be said to have been suggested by the combined disclosures of the applied references to arrive at the claimed invention. *In re Lee* 237 F.3d 1338, 61 USPQ2d 1430, 1433 (Fed. Cir. 2002). Indeed, any modification of the methodology of Yano et al. to arrive at the claimed invention is completely **inconsistent** with the disclosed sequence of manipulative steps. It is well settled that one having ordinary skill in the art can not be considered realistically motivated to modify a reference in a manner inconsistent with the disclosed objective. *In re Fritch*, 972 F.2d 1260, 23 USPQ2d 1780 (Fed. Cir. 1992); *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984); *In re Schulpen*, 390 F.2d 1009, 157 USPQ 52 (CCPA 1968).

Applicants, therefore, submit that the imposed rejection of claims 9 through 11 (again presumably intending claims 9, 11 and 12) under 35 U.S.C. §103 for obviousness predicated upon Yano et al. in view of Gwon et al. and Tottori is not factually or legally viable and, hence, solicit withdrawal thereof.

It should, therefore, be apparent that the imposed rejection has been overcome and that all pending claims are in condition for immediate allowance. Favorable consideration is, therefore, respectfully solicited.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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